

FREDERICK COUNTY PLANNING COMMISSION  
MEETING OF October 14, 2009  
9:30 a.m.

Members Present: Catherine Forrence; Chairperson, Robert White; Vice-Chair, John McClurkin; Secretary, Kai Hagen, Commissioner Liaison; Joe Brown, Richard Floyd, and Audrey Wolfe

Staff Present: Gary Hessong, Director, DPDR; Kathy Mitchell, Assistant County Attorney; Wendy Kearney, Deputy County Attorney; Tolson DeSa, Principal Planner; Stephen O'Philips, Principal Planner; Betsy Smith, Deputy Director, DPDR, Kathy Hall, Engineer DPDR; Bryon Mitchell Manager, Office of Life Safety, Mark Depo, Deputy Director, Planning; Eric Soter, Director, Planning; Jim Gugel, Chief Planner, Planning Tim Goodfellow, Principal Planner II and Linda Williamson, Development Review Technician.

1. **MINUTES:**

Mr. White made a motion to approve the Minutes as written, 2<sup>nd</sup> Mr. Brown.

**Yea 7    Nay 0**

2. **PLANNING COMMISSION COMMENTS:**

N/A

3. **AGENCY COMMENTS/AGENDA BRIEFING:**

Gary Hessong, Director DPDR, stated staff received a letter on 10/13/09 from the applicant's attorney in SP 92-37 Global Mission Church, requesting a continuance of up to an additional 90 days. .

**Decision:** Mr. Hagen made a motion to stay with the Agenda as publicly advertised, 2<sup>nd</sup> Mr. White.

**Yea 7    Nay 0**

4. **WATER & SEWER PLAN AMENDMENT (Summer 2009 Cycle)**

*(Continued from September 16, 2009 FcPc Meeting)*

- a) The following is a request to amend the County Water & Sewerage Plan, for the purpose of determining consistency with the County's Comprehensive Plan.

**Staff Presentation:**

Tim Goodfellow, Principal Planner II, presented the Amendment

Wendy Kearney, Deputy County Attorney answered questions from the Planning Commission

**Applicant Presentation:**

Mathew Regan, Architect represented the Church

**Public Comment:**

N/A

**Rebuttal:**

N/A

**Decision:** Mr. White made a motion for a finding of consistency with the County Comprehensive Plan, 2<sup>nd</sup> Ms. Wolfe.

**Yea 5    Nay 1 (Floyd)    Abstained 1 (McClurkin)**

**5. SOLID WASTE MANAGEMENT PLAN (SWMP) AMENDMENT**

*(Continued from the September 16, 2009 FcPc Meeting)*

- a) Staff from the Division of Utilities and Solid Waste Management will be presenting amendments to the Solid Waste Management Plan for Planning Commission Review and Recommendation to the Board of County Commissioners.

**Staff Presentation:**

Eric Soter, Director Planning and Mike Marschner, Director of DUSWME, presented the Amendment

Michael Chomel, Assistant County Attorney; answered questions from the Planning Commission

**Public Comment:**

N/A

**Decision:** Mr. Brown made a motion to find the amendments of the SWMP inconsistent with the 1998 CWCP, specifically noting the following policies in the 1998 CWCP on the following pages:

Page 3-36(#2, #3, #5)

Page 8-38(#14)

Page 10-25(#2)

,2<sup>nd</sup> Ms. Forrence.

**Yea 3    Nay 2 (Floyd, Wolfe)    Abstained 2 (White, McClurkin)**

## 6. SITE PLAN

a) Potomac Valley Brick - (Continued from the September 9, 2009 FcPc Meeting)

The Applicant is requesting approval for a change of use site plan for brick yard use within an existing 60,180 square foot of wholesale, warehouse and storage space on a 15.37-acre site. No new construction is being proposed as part of this application. Located along MD 355 south of New Horizon Way. Zoned: General Industrial (LI), Frederick Planning Region, Tax Map 86 / Parcel 99.  
File# SP-08-32, AP# 9535

*All parties and Staff wishing to give testimony in this matter were sworn in.*

### **Staff Findings/Recommendations:**

#### **Findings:**

Based on the discussion in this report and with the conditions listed below, Staff finds that the application meets and/or will meet all applicable Zoning, APFO and FRO requirements once the conditions of approval have been met.

*Staff notes that if the Planning Commission conditionally approves the site plan, the site plan is valid for a period of three (3) years from the date of Planning Commission approval and the APFO is valid for a period of three (3) years from the date of Planning Commission's approval.*

Staff has no objection to conditional approval of the site plan.

#### **Recommendation:**

Should the Planning Commission conditionally approve this Site Plan SP # 09-07 (AP# 9535, APFO 9536 & FRO 9535) for the proposed Potomac Valley Brick, the motion for approval should include the following item:

1. Approval of a 60,180 square foot Wholesale/Warehouse/Showroom building, consisting of one (1) building on a 15.374 acre site. The Applicant is proposing a total of 46 paved parking spaces throughout the site.
2. Site plan approval for a period of (3) three years from today's date.
3. APFO approval for a period no longer than three (3) years from today's date.

*Staff recommends that the following items be added as conditions of approval:*

1. Address all agency comments as the plan proceeds through completion.

#### **Staff Presentation:**

Tolson DeSa, DPDR, presented the Staff Report

George Keller and Kim Dillman of the Health Dept. spoke on Health Department requirements.

**Applicant Presentation:**

Mr. Waksmunski of Potomac Valley Brick, and Mike Plitt of Macris, Hendricks and Glascock represented the applicant presented the proposal

**Public Comment:**

N/A

**Rebuttal:**

N/A

**Decision:** Mr. Brown made a motion in case SP 08-32 for conditional approval, subject to 1, 2 & 3 and also to accept a proffer on #1 the sidewalk and #2 to work with the health department and also to include staff findings and recommendations 2<sup>nd</sup> Mr. White.

**Yea 6    Nay 0    Absent 1 (Hagen)**

- b) Global Mission Church – (Continued from the July 8<sup>th</sup> and 15<sup>th</sup> FcPc Meetings)  
Requesting approval for a 137,028 sq. ft. church and associated parking fields for 397 spaces. Located north of MD 109 (with all access located in Montgomery County) on the west side of I-270 (at the Frederick County southern border). Zoned: Agricultural (AG) in the Urbana Planning Region. Tax Map 105 / Parcel 109.  
File #SP 92-37, AP# 8995

*All parties and Staff wishing to give testimony in this matter were sworn in.*

**Decision 1:** Mr. Floyd made a motion to grant 10 minutes for Presentation and 10 minutes for rebuttal, 2<sup>nd</sup> Mr. Brown.

**Yea 6    Nay 1 (Forrence)**

**Decision 2:** Mr. White made a motion to allow reasonable cross examination by the applicant, 2<sup>nd</sup> Mr. Hagen.

**Yea 5    Nay 2 (McClurkin, Brown)**

**Staff Findings/Recommendations:**

**Findings**

The Applicant proposes to build a 138,027 sq. ft. church with associated parking. The Applicant is requesting approvals for the following applications:

- ☐ Site Plan (AP # 8995)
- ☐ APFO (AP # 8996)
- ☐ FRO (AP # 8997)
- ☐ Loading Space Modification (AP # 8995)

The Staff finds that:

- 1) Site Plan approval could only be given for a three-year period from the date of FcPc approval.
- 2) Signature of the Site Plan would not occur until after completion of the forest plans and associated legal documents (for the Frederick County portion).
- 3) The APFO approval could be granted for as long as the site plan remains valid, but for no more than three years. The approval would be based on the Applicant's DOL that proffers pro rata contribution to one road escrow account, the intersection of MD 355/Fire Tower Road.
- 4) The evidence of 500 +- cars parked at the Silver Spring location calls into question the adequacy of this site with only 397 parking spaces.
- 5) "Staff reported at the July hearing that all component parts of the Montgomery County reviews were approved by the various Montgomery County reviewers"
- 6) The Montgomery County Rustic Road criteria cannot be the basis for denial of this application, because the Rustic Road criteria are a Montgomery County comprehensive planning tool, not code requirements, and are not part of Frederick County's site plan review criteria.
- 7) Two evaluation methods (actual water usage data + project maximum occupancy load) have yielded information to demonstrate that the proposed 4,999 gpd septic system is not adequate to serve a building of this size (138,027 sq. ft.):
  - a) The first method (actual water usage at the Silver Spring location) shows that a septic system greater than 5,000 gpd would be needed to serve this building, thus requiring a Water and Sewerage Plan Amendment.
  - b) The second method (maximum building occupancy load) showed that the number of fixtures needed for a building of this size, used at full occupancy would exceed the 4,999 gpd septic capacity on site.
- 8) The Office of Life Safety has re-assessed this application following the analysis of the floor plans submitted by the Applicant and has determined that the maximum building occupancy would require a secondary access point to meet site safety criteria. No secondary access point has been provided on this plan.
- 9) Additional, minor drafting additions and corrections are needed to bring this application in full compliance with the various Code requirements.

- 10) As discussed in this report, the Health Department has denied approval of the proposed water and sewage facilities proposed for this development are not adequate.<sup>1</sup> Therefore, per §1-19-3.300.4(C) of the Zoning Ordinance, the Site Plan must be denied.

**Recommendation:**

In addition to this Site Plan application (AP # 8995) for the building of a 138,027 sq. ft. church and associated parking fields, the Applicant is requesting the following associated approvals:

- ❑ APFO (AP # 8996)
- ❑ FRO (AP # 8997)
- ❑ Loading Space Modification (AP # 8996)

Because the Health Department has denied approval of the proposed water and sewage facilities for this project, and due to the lack of a secondary access point, the Staff recommends denial of this application.

*1 Section 1-19-3.300.4(C) states: "Where proposed development will be served by facilities other than publicly owned community water and sewer, the facilities shall meet the requirements of and receive approval from the Maryland Department of the Environment/the Frederick County Health Department".*

**Staff Presentation:**

Stephen O'Philips, DPDR, presented the Staff Report

Bryon Mitchell, Manager of the Office of Life Safety, spoke on the requirements of the Office of Life Safety and answered questions from the Planning Commission.

Kathy Mitchell, Assistant County Attorney, spoke on the legal authority of the Planning Commission.

Mr. George Keller, Frederick County Health Department, spoke on the roles and responsibilities of the health department regarding the project and also answered questions from the Planning Commission.

Mr. Callum Murray representing The Montgomery County Planning Department, spoke on the project from the Montgomery County Planning Department.

Ms. Alum from Commissioner Knapp's Office read a statement from Mr. Knapp's office.

**Applicant Presentation:**

Mr. Dave Severn, Mr. Danny O'Connor and Ms. Ashley Mancinelli, Esquires, represented the applicant and presented the proposal.

Mr. Pritam Arora, Civil engineer, provided information on the FRO easement and the existing driveway.

Mr. Jared Wilcox, Architect, spoke on the on the property and also spoke about the building design and how it relates to permitting.

Mr. Greg Klebanoff, KTD Engineers, provided a report and spoke on the well and septic use and answered questions from the Planning Commission

CROSS EXAMINATION: The Applicant' Attorney cross examined witnesses. Deputy County Attorney, Wendy Kearney, cross examined the Applicant's witnesses. Mr. McKenna cross examined witnesses.

**Public Comment:**

Many members of the public provided comments and submitted documents relating to the application\*

\*see attached signup sheet

**Decision 3:** Mr. White made a motion to allow 5 minutes for rebuttal, 2<sup>nd</sup> Mr. Floyd.

**Yea 5 Nay 1 (Brown) Abstained 1 (Hagen)**

**Rebuttal:**

Mr. Dave Severn, Esquire, representing the Applicant presented the rebuttal.

**Decision 4:** Mr. White made a motion to deny the application based on the Findings of the Staff Report including the septic capacity and the lack of a second exit, 2<sup>nd</sup> Ms. Wolfe.

**Yea 6 Nay 1 (Brown)**

Meeting adjourned at 6:35 p.m.

Respectfully Submitted,

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Catherine Forrence, Chairperson